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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DONALD CARROLL ROE, PANKAJ NIGAM,
MARK JAMES KLINE, JEROMY THOMAS RAYCHECK
and CARL LOUIS BERGMAN

Appeal 2009-003626
Application 10/811,696
Technology Center 3700

Decided: October 30, 2009

Before TONI R. SCHEINER, RICHARD M. LEBOVITZ, and
FRANCISCO C. PRATS, *Administrative Patent Judges*.

SCHEINER, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 from the rejection of claims 1, 3, and 5-20, directed to an absorbent article. The claims have been rejected on the grounds of anticipation and obviousness. We have jurisdiction under 35 U.S.C. § 6(b).

STATEMENT OF THE CASE

Claim 1 is representative of the subject matter on appeal:

1. A unitary disposable absorbent article, comprising:
an absorbent core having a garment-facing surface and a body-facing surface;
a liquid permeable topsheet positioned adjacent said body-facing surface of said absorbent core;
a liquid impermeable backsheet positioned adjacent said garment-facing surface of said absorbent core; said backsheet having a physical variation along a longitudinal axis of the article, wherein said physical variation defines a first backsheet zone and a second backsheet zone, wherein said physical variation is as measured by a physical property selected from the group consisting of at least one of basis weight, thickness and density and at least one elastomeric element having at least one primary direction of stretch, said elastomeric element at least partially overlapping and joined to said second backsheet zone, wherein a relaxed pathlength of said elastomeric element in the primary direction of stretch is less than a total pathlength of said backsheet in the region of overlap.

The Examiner relies on the following evidence:

Dobrin et al.	US 5,571,096	Nov. 5, 1996
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The Examiner rejected the claims as follows:

- Claims 1, 3, 5-8, and 11-20 under 35 U.S.C. § 102(b) as anticipated by Dobrin.
- Claims 9 and 10 under 35 U.S.C. § 103(a) as unpatentable over Dobrin.

We reverse.

ANTICIPATION

Issue

Claim 1, the only independent claim on appeal, is directed in pertinent part to an absorbent article with a liquid impermeable backsheet comprising first and second backsheet zones defined by “a physical variation along a longitudinal axis of the article,” as measured by basis weight, thickness and/or density.

The Examiner finds that Dobrin discloses an absorbent article with “some physical variation in the longitudinal axis . . . between the apertured and unapertured regions” of the article (Ans. 4).

Appellants contend that even “[i]f the differences between the apertured and unapertured zones in the backsheet of the Dobrin reference are such ‘physical variations,’” the variation “occur[s] only in the lateral direction, not in the longitudinal direction” (App. Br. 8).

In view of these conflicting positions, the issue raised by this rejection is as follows: Has the Examiner established that Dobrin describes an absorbent article with a liquid impermeable backsheet comprising first and second backsheet zones defined by “a physical variation along a longitudinal axis of the article,” as measured by basis weight, thickness and/or density?

Findings of Fact

FF1 Claim 1 is directed to an absorbent article with a liquid impermeable backsheet comprising first and second backsheet zones defined by “a physical variation along a longitudinal axis of the article,” as measured by basis weight, thickness and/or density.

FF2 Figure 2 of the Specification, reproduced immediately below, is a plan view of an embodiment of the claimed invention:

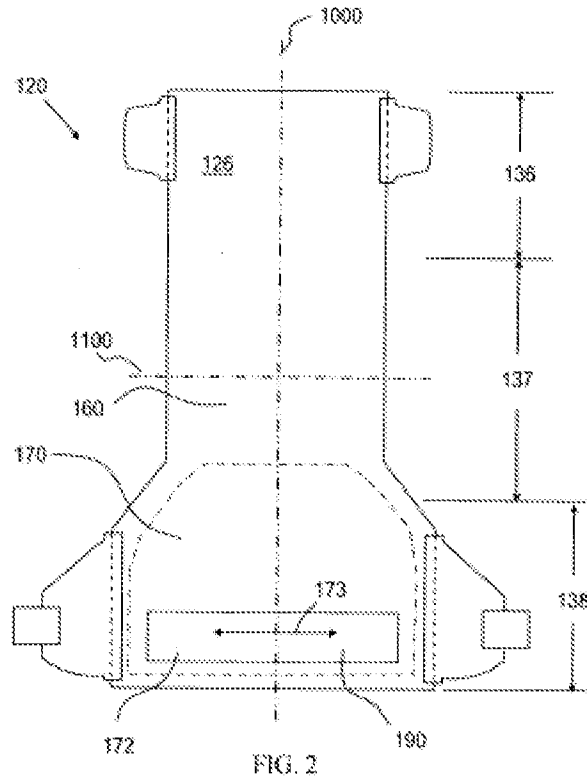


Figure 2 is a plan view of a diaper 120 in its flat, uncontracted state, with the garment-facing side of backsheet 126 facing the viewer, and showing longitudinal axis 1000, and lateral axis 1100. The backsheet has two backsheet zones, 160 and 170, differing from each other in basis weight, thickness, and/or density. (Spec. 7, 11-12.)

FF3 Dobrin describes an absorbent article with breathable side panels. The article comprises a topsheet, a backsheet, and an absorbent core between the topsheet and backsheet. The backsheet comprises three distinct zones: a central non-apertured zone, and a pair of apertured zones flanking the central zone. (Dobrin, col. 2, ll. 14-29.)

FF4 Dobrin's Figure 1, reproduced immediately below, shows the orientations of longitudinal axis 100 and lateral axis 110 on a plan view of the inner, body-facing surface of Dobrin's article, in this case diaper 20, in its flat, uncontracted state:

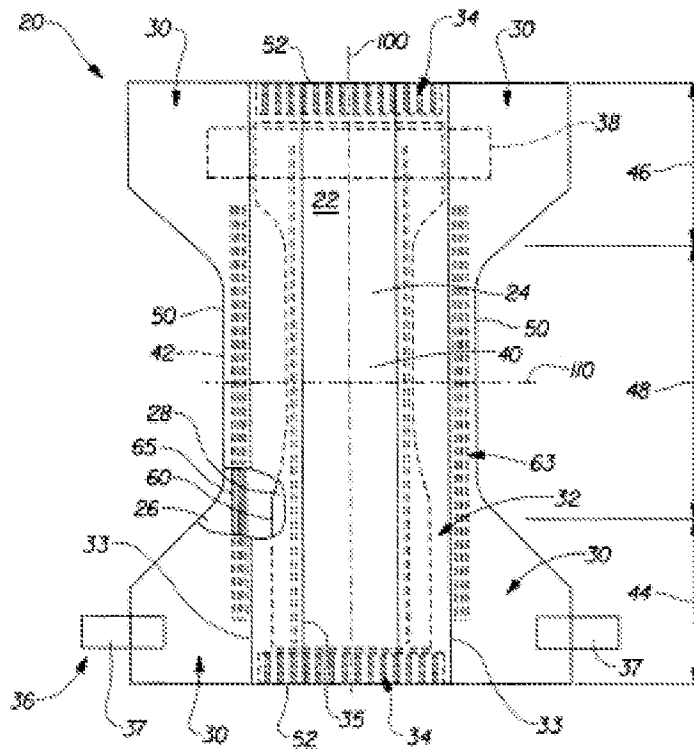


Fig. 1

Figure 1 is a plan view of the inner, body-facing surface of Dobrin's diaper 20, in its flat, uncontracted state.

The diaper . . . has two centerlines, a longitudinal centerline 100 and a transverse centerline 110. The term 'longitudinal' . . . refers to a line, axis, or direction in the plane of the diaper 20 that is generally aligned with (e.g. approximately parallel with) a vertical plane which bisects a standing wearer into left and right halves when the diaper 20 is worn. The terms 'transverse' and 'lateral' . . . are interchangeable and refer to a line, axis or direction which lies within the plane of the diaper that is generally perpendicular to the longitudinal direction . . .

(Dobrin, col. 3, l. 63 to col. 4, l. 6).

FF5 Dobrin's Figure 2, reproduced immediately below, is a plan view of the backsheet of diaper 20:

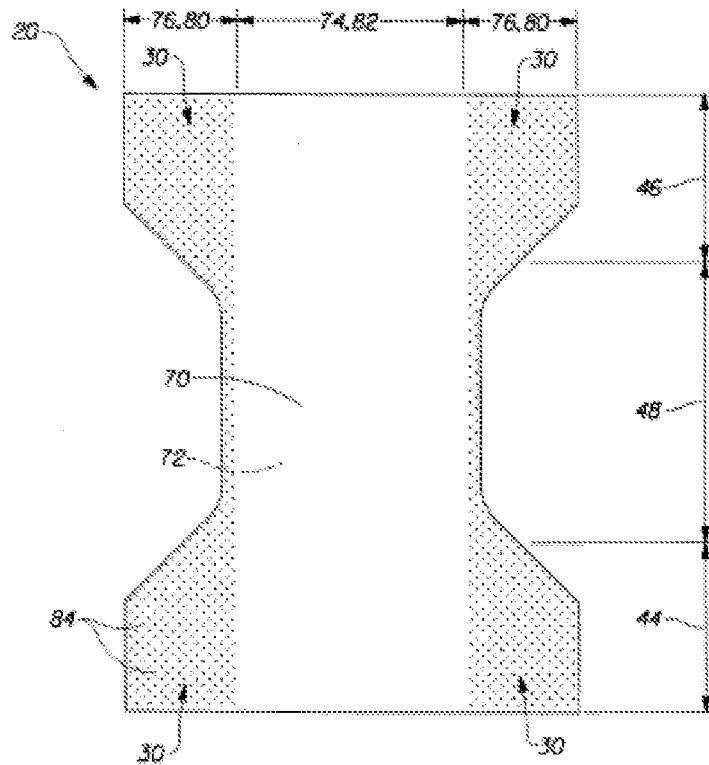


Fig. 2

Figure 2 is a plan view of the backsheet 26 of Dobrin's diaper 20, showing non-apertured zone 82 coextensive with central region 74, and two apertured zones 80 coextensive with outer regions 76, each extending laterally away from central region 74 (Dobrin, col. 7, ll. 35-67; col. 8, ll. 42-44).

FF6 Dobrin's Figure 3, reproduced immediately below, is a cross-sectional view of the backsheet shown in Figure 2:

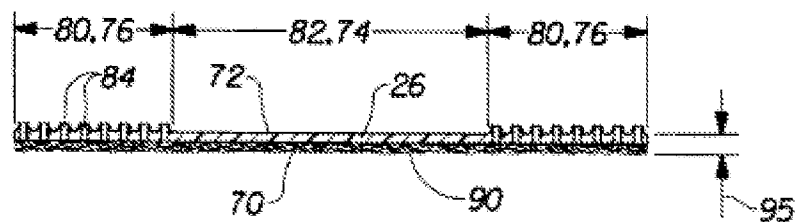


Fig. 3

Figure 3 is a cross sectional view of the backsheet shown in Figure 2 (Dobrin, col. 2, ll. 54-55).

FF7 The Examiner and Appellants agree that Dobrin's Figure 3 represents a cross section taken along a lateral axis of the backsheet of Dobrin's diaper 20 (Ans. 7; App. Br. 8).

Principles of Law

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros., Inc. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987).

During examination, the PTO must interpret terms in a claim using "the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant's specification." *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

Analysis

The Examiner rejected claims 1, 3, 5-8, and 11-20 as anticipated by Dobrin. According to the Examiner, "[t]he backsheet of Dobrin has a physical variation along at least one axis . . . [which] defines a first backsheet zone and a second backsheet zone . . . measured by the physical properties of thickness, weight, and density as Dobrin discloses microapertured regions and unapertured regions of the backsheet" (Ans. 4). The Examiner concedes that Dobrin's "Figure 2 shows a physical variation in the lateral axis between zones 76 and 74" (*id.*), but finds that "there is some physical variation in the longitudinal axis as well, which is

demonstrated in Figure 3 between the apertured and unapertured regions of zone 76 [sic, 80]” (*id.*).

The Examiner’s reliance on Dobrin’s Figures 2 and 3 does not support a finding that Dobrin discloses a backsheet comprising first and second backsheet zones defined by “a physical variation along a longitudinal axis of the article,” as required by the claims. If we understand the basis of the Examiner’s finding, it is that a longitudinal axis parallel to the longitudinal axis 1000 shown in Dobrin’s Figure 2, but entirely within zone 76/80, would pass through a myriad of sub-zones as it travels from one aperture to the next through Dobrin’s backsheet in the direction of the front waist region 46 to the rear waist region 44. This interpretation of Dobrin would require each aperture in zone 76/80 to be a “zone” in and of itself, and the surfaces between apertures to be zones as well. We don’t agree that one of ordinary skill in the art would interpret the individual apertures and the surfaces between individual apertures in Dobrin’s zone 76/80 to be the first and second backsheet zones defined by a physical variation, especially given the depictions of first and second backsheet zones in the present Specification’s drawings, e.g., first and second backsheet zones 160 and 170 in Figure 2 of the Specification (FF2). Rather, the apertures and surfaces appear to constitute the physical variations covered by the claims, rather than the zones themselves.

Dobrin’s Figures 2 and 3 clearly show zones with physical variation in the backsheet along a lateral axis, but not a longitudinal axis of the backsheet.

Conclusions of Law

The Examiner has not established that Dobrin describes an absorbent article with a liquid impermeable backsheet comprising first and second backsheet zones defined by “a physical variation along a longitudinal axis of the article,” as measured by basis weight, thickness and/or density.

OBVIOUSNESS

Issue

The Examiner rejected claims 9 and 10 as unpatentable over Dobrin (Ans. 6).

The issue raised by this rejection is as follows: Has the Examiner established that an absorbent article with a backsheet comprising first and second backsheet zones defined by “a physical variation along a longitudinal axis of the article,” as measured by basis weight, thickness and/or density would have been obvious, given Dobrin’s disclosure?

Analysis

Claims 9 and 10 depend from claim 1, and therefore require the limitations of claim 1. However, as discussed above, Dobrin does not disclose an absorbent article comprising a backsheet with zones defined by a physical variation along a longitudinal axis of the article. The Examiner’s rejection does not address this underlying deficiency in the reference.

Conclusions of Law

The Examiner has not established that an absorbent article with a backsheet comprising first and second backsheet zones defined by “a physical variation along a longitudinal axis of the article,” as measured by basis weight, thickness and/or density would have been obvious, given Dobrin’s disclosure.

SUMMARY

- The rejection of claims 1, 3, 5-8, and 11-20 under 35 U.S.C. § 102(b) as anticipated by Dobrin is reversed.
- The rejection of claims 9 and 10 under 35 U.S.C. § 103(a) as unpatentable over Dobrin is reversed.

REVERSED

cdc

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